

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

RAYTHEON COMPANY a/b/t
NETWORK CENTRIC SYSTEMS,
2501 West University Dr.
M/S 8064
McKinney, TX 75070-0801

Plaintiffs,

v.

DEPARTMENT OF THE ARMY,
USARDECOM Acquisition Center
ATTN: AMSRD-ACC-CC
4118 Susquehanna Ave
APG, MD 21005-3013

and

WASHINGTON MANAGEMENT
GROUP, INC. d/b/a FEDSOURCES
1990 M St NW # 400
Washington, DC 20036

Defendant.

Case No. _____

COMPLAINT

COMES NOW the Plaintiff, Raytheon Company, acting by and through its Network Centric Systems business unit ("Raytheon"), by and through its undersigned counsel, and hereby submit this Complaint against Defendant Department of the Army ("Army") and The Washington Management Group, d/b/a FedSources ("FedSources"). By this Complaint, Plaintiff Raytheon seeks to enjoin Defendant Army to instruct Defendant FedSources to return and/or destroy any and all information received in

response to its FOIA request regarding Contract No. W91CRB-07-D-0029 ("Contract"), and enjoin Defendant FedSources to comply with this demand. Further, Raytheon seeks to permanently prevent Defendants Army and FedSources from releasing Plaintiff's confidential and proprietary commercial and financial information (including pricing information) related to the Contract. Plaintiff Raytheon states for its Complaint against Defendants Army and FedSources as follows:

NATURE OF THIS ACTION

1. This action challenges the Army's decisions on or about July 30, 2007 ("July 30, 2007 Decision") and August 9, 2007 ("August 9, 2007 Decision") to release the Plaintiff's confidential and proprietary commercial and financial information (including pricing information) related to the Contract pursuant to various Freedom of Information Act ("FOIA") requests, including one from Defendant FedSources, over Raytheon's written and timely filed objection. Contrary to law and regulation, the Army actually released significant elements of this information to FedSources on or about August 6, 2007 with no notice to Raytheon of its intention to do so ("August 6, 2007 Release"). Raytheon was not informed of the August 6, 2007 Release until August 9, 2007.

2. The July 30, 2007 Decision, The August 9, 2007 Decision, and the August 6, 2007 Release violate the federal Administrative Procedure Act ("APA") for several reasons. First, the information the Army decided to release falls within the scope of Exemption 4 of the FOIA, 5 U.S.C. § 552(b)(4). The Army is therefore not authorized by law to release such information. Second, the information the Army decided to release is

a trade secret within the meaning of the Trade Secrets Act ("TSA"). The Army is therefore prohibited by law from releasing such information.

3. For these reasons, the Army's July 30, 2007 Decision, August 9, 2007 Decision, and August 6, 2007 Release are in excess of statutory jurisdiction, authority, or limitations, or short of statutory right. The July 30, 2007 Decision, August 9, 2007 Decision, and August 6, 2007 Release are also arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Therefore, Plaintiff respectfully requests that this Court hold Defendant Army's July 30, 2007 Decision, August 9, 2007 Decision, and August 6, 2007 Release to be unlawful, and accordingly set them aside. Furthermore, Plaintiff respectfully requests that this Court enjoin the Army to require Defendant FedSources to return and/or destroy any and all information received via the August 6, 2007 Release, and enjoin Defendant FedSources to comply with this demand. Further, Plaintiff respectfully requests this Court to permanently enjoin Defendants Army and FedSources from releasing the requested information.

JURISDICTION AND VENUE

4. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 331 because this action arises under the laws of the United States. In particular, this action arises under the federal Administrative Procedure Act, as amended. This action also involves the application of the Freedom of Information Act, as amended, and the Trade Secrets Act, as amended.

5. Venue is proper in this Court.

PARTIES

6. Plaintiff Raytheon Company is a Delaware corporation. Raytheon Company's Network Centric Systems business unit has its principal place of business at 2501 West University Drive, M/S 8064, McKinney, Texas, 75070-0801. Raytheon Company's Network Centric Systems business unit is engaged in, among other things, the business of manufacturing thermal weapon-mounted sights.

7. Defendant Department of the Army is an agency of the United States as defined by the Administrative Procedure Act, 5 U.S.C. § 701(b)(1). It is also an agency of the United States which falls within the scope of 28 U.S.C. § 1391.

8. Upon information and belief, Defendant Washington Management Group d/b/a FedSources is a Virginia corporation with its principal place of business located at 1990 M Street NW, Ste. 400, Washington, DC 20036.¹

FACTUAL ALLEGATIONS

9. On or about June 26, 2007, Defendant Army awarded Plaintiff Raytheon Contract No. W91CRB-07-D-0029, for delivery of thermal weapon sights for use by Army warfighters ("the Contract"). The Contract was and remains a multiple-award firm fixed priced Indefinite Delivery, Indefinite Quantity ("ID/IQ") contract. The Contract was and remains for a period of five years.

¹ Plaintiff does not allege any wrongdoing on the part of Defendant FedSources, but has named them as a necessary party to allow this Court to retain the authority and ability to enforce meaningful relief on the merits. Through no fault of its own, FedSources is now in possession of proprietary and confidential trade secrets belonging to Raytheon. As noted below, counsel for FedSources recovered the package released by the Army prior to its being opened by FedSources, and has committed to retaining it unopened during the pendency of this matter.

10. At the same time, similar contracts were issued to BAE Systems, Inc. ("BAE") and DRS, Inc. ("DRS") BAE and DRS are competitors of Raytheon's in the thermal weapons sight market.

11. Very detailed technical specifications and performance requirements for the thermal weapon sights procured by the Contract were established by the Army and provided to all offerors. The resulting thermal weapons sights were, with minor variations, substantially similar in design and technical performance. As such, the competition was primarily conducted on the basis of pricing and delivery options. As the contract proceeds, the Army will issue requests for proposals to fill delivery orders for the specified thermal weapon sights. Competition for these delivery orders will similarly be conducted primarily on the basis of price and delivery options.

12. On or about July 5, 2007, Defendant FedSources submitted to Defendant Army a request pursuant to the FOIA ("FedSources FOIA Request"). The FOIA Request asked Defendant Army to produce the Contract, which included all of Raytheon's proprietary pricing data, and the accompanying Statement of Work ("SOW"), which incorporated proprietary elements of Raytheon's proposal, such as the terms of Raytheon's offered warranty.

13. Defendant Army notified Plaintiff Raytheon of this request by email dated July 16, 2007 ("July 16, 2007 Email"). (Exhibit A.) The July 16, 2007 Email also stated "If you have any questions regarding the release of these documents, please [respond] by 24 Jul 07."

14. On or about July 23, 2007, Plaintiff Raytheon responded to the July 16, 2007 Email by submitting to Defendant Army its Opposition to the FOIA Request (“Opposition to FedSources FOIA Request”). (Exhibit B.) By its Opposition to FedSources FOIA Request, Raytheon strenuously objected to the release of all line-item price and price-related information contained in the Contract, and all proprietary information contained in either the Contract or the SOW. The Opposition to FedSources FOIA Request also stated the legal grounds supporting Raytheon’s demonstration that the release of the specified information is not authorized by the Federal Acquisition Regulation (“FAR”), is not authorized by the FOIA, and is prohibited by the Trade Secrets Act. Raytheon also provided proposed redacted versions of the Contract and the SOW, indicating specifically what information Raytheon believed to be protected from release. (Exhibit C.)²

15. In mid-July the Army received a second FOIA request, submitted by the Law Offices of Gregory D. Jordan (“Jordan FOIA Request”). The Jordan FOIA Request asked Defendant Army to produce the Contract, which included all of Raytheon’s proprietary pricing data, and all attachments, which include the Statement of Work (“SOW”).

16. Defendant Army notified Plaintiff Raytheon of this request by email dated July 17, 2007 (“July 17, 2007 Email”). (Exhibit D.) The July 17, 2007 Email also stated

² Raytheon has concurrently moved to file Exhibits C and F under seal. Therefore, Exhibits C and F are not attached to this Complaint, but are attached to the concurrently filed Motion to Seal, per LCvR 5.1(j).

that it was the Army's intent to release the requested material, and that Raytheon should respond by August 2, 2007 with any response.

17. On or about August 2, 2007, Plaintiff Raytheon responded to the July 17, 2007 Email by submitting to Defendant Army its Opposition to the Jordan FOIA Request ("Opposition to Jordan FOIA Request"). (Exhibit E.) By its Opposition to Jordan FOIA Request, Raytheon strenuously objected to the release of all line-item price and price-related information contained in the Contract and attachments. The Opposition to Jordan FOIA Request also stated the legal grounds supporting Raytheon's demonstration that the release of the specified information is not authorized by the Federal Acquisition Regulation ("FAR"), is not authorized by the FOIA, and is prohibited by the Trade Secrets Act. Raytheon also provided proposed redacted versions of the Contract and the attachments, indicating specifically what information Raytheon believed to be protected from release. (Exhibit F.)³

18. On or about August 9, 2007, the Army sent Raytheon a letter rejecting these arguments, and stating that the Army intended to release the requested documents on August 20, 2007 ("August 9, 2007 Decision"). (Exhibit G.)

19. Upon information and belief, the Army has received at least one other FOIA request, but the Army has taken the position that once the August 20, 2007 release takes place, the Army will have determined the releaseability of the entire contract file,

³ Plaintiff Raytheon has concurrently moved to file Exhibits C and F under seal. Therefore, Exhibits C and F are not attached to this Complaint, but are attached to the concurrently filed Motion to Seal, per LCvR 5.1(j).

and will process all further requests at that time under the determinations made in response to the first two with no further notice to Raytheon.

20. The Contract includes Raytheon's pricing for delivery of completed thermal weapon sights, including base prices and "range prices," i.e. different prices set for orders of varying quantities of sights, with "volume discounts" applied to prices for larger orders. The contract also included pricing for spare parts and support options. Both the Contract and the attachments included terms and conditions offered by Raytheon as part of its competitive strategy, including warranty terms and delivery schedule commitments. All of this information was redacted from the Contract and attachments Raytheon submitted with its two Oppositions to the FOIA Requests.

21. On August 9, 2007, the Army informed Raytheon via telephone that it had released elements of the Contract to FedSources on August 6, 2007. Subsequent conversation on August 9, 2007 clarified that the Army had released to FedSources, at a minimum, all of Raytheon's base contract pricing, as well as a completely unredacted SOW. At this time, Raytheon has not been provided with a copy of the as-released documents.

22. Raytheon was not notified prior to the August 9, 2007 telephone call that the Army had overruled its objection, and was afforded no opportunity to appeal the Army's determination to this Court prior to release. The Army stated that on July 30, 2007, the Army had written and sent a letter notifying Raytheon of the decision via Federal Express ("FedEx") overnight mail ("July 30, 2007 Letter"). The Army stated, however, that the package had been returned to the Army by FedEx on August 9, 2007 as

undeliverable, because it had been addressed to Raytheon's P.O. box, and FedEx does not deliver to P.O. boxes.

23. The Army faxed Raytheon a copy of the letter on August 9, 2007, along with a copy of the shipping label on the FedEx envelope. (Exhibit H.) The envelope was addressed to Ms. Carol Harrington, Senior Manager, Contracts, Raytheon, P.O. Box 660246, M/S 31, Dallas, TX, 75260. Directly below the line upon which the P.O. box number was entered was the pre-printed instruction "We cannot deliver to P.O. boxes."

24. Raytheon's Objection to FOIA Request included a return address, including a P.O. box number, which would have been effective for mailing by methods other than FedEx. Raytheon never requested correspondence to be sent via FedEx. Page 1 of the Contract included a street address, which would have been sufficient to ensure delivery via FedEx.

25. The July 30, 2007 Letter, received by Raytheon on August 9, 2007, stated that the Army had determined that Raytheon "fail[ed] to support a conclusion that competitive harm will result from release of unit pricing, total amount, range pricing, range quantities, and warranty information in statement of work (3.2.10). This information reflects the price the government pays and is not exempt from release. I am directing the release of the basic contract and attachment 1 (Statement of Work). This release will be effected on August 6, 2007."

26. Raytheon counsel has contacted FedSources and discussed the facts set forth above. FedSources has informed Raytheon that it has located the package sent by the Army before it was opened. FedSources counsel has committed to retain the package

unopened until this Court makes a determination on the merits. Therefore, the information has not been released to the public, and the authority of this Court to afford relief on the merits is unaffected by the August 6, 2007 Release.

27. Upon information and belief, FedSources and the Law Offices of Gregory D. Jordan ("Jordan") are firms that, *inter alia*, file FOIA requests on behalf of third party clients. Upon information and belief, FedSources' and/or Jordan's clients are direct competitors of Raytheon's in the thermal weapon sight market.

28. At all relevant times, Plaintiff Raytheon has considered the information sought by the FOIA Request to be confidential and proprietary commercial and financial information within the meaning of the FOIA, and have protected it as such.

29. At all relevant times, Plaintiff Raytheon have considered the information sought by the FOIA Request to be trade secrets within the meaning of the TSA, and have protected them as such.

30. On or about August 1, 2007, the Army requested terms from the offerors for a Contract requirement for 29 thermal weapon sights. (Exhibit I.) This solicitation makes clear that offerors are free to offer lower pricing for the task order than is contained in their awarded ID/IQ contract.

COUNT ONE

Violation of Administrative Procedure Act (Defendant's Action is in Excess of Statutory Authority Under FOIA)

31. Plaintiff Raytheon incorporates by reference the allegations in Paragraphs 1 - 30 of its Complaint, as if fully set forth herein.

32. The July 30, 2007 Decision, the August 9, 2007 Decision, and the August 6, 2007 Release of Defendant Army constitute a final agency action within the meaning of 5 U.S.C. § 704, and is therefore a reviewable action as defined by the Administrative Procedure Act. In its attempt to protect the information sought by the FOIA Request, Plaintiff Raytheon has exhausted all the available administrative remedies provided by the Army.

33. Plaintiff Raytheon will suffer irreparable harm if the Army releases the Plaintiff's confidential and proprietary commercial and financial information (including pricing information) requested by the Jordan FOIA request, or by other subsequent requests.

34. Plaintiff Raytheon will suffer irreparable harm if the Plaintiff's confidential and proprietary commercial and financial information (including pricing information) that the Army has released to FedSources are further disseminated either to FedSources' client or any other entity.

35. The FOIA authorizes agencies to disclose certain information upon a request for records. 5 U.S.C. § 552(a). Exemption 4 of the FOIA, however, exempts privileged or confidential commercial or financial information from the application of the statute.

36. The FOIA Requests seek privileged and confidential commercial or financial information that is exempted from the application of the FOIA. Therefore, Defendant Army is not authorized by the FOIA to disclose the requested information.

37. The July 30, 2007 Decision, the August 9, 2007 Decision, and August 6, 2007 Release constitute an act which is unlawful because it is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right within the meaning of 5 U.S.C. § 706(2)(C). It is also unlawful because it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law within the meaning of 5 U.S.C. § 706(2)(A).

38. Accordingly, this Court should set aside the July 30, 2007 Decision and the August 9, 2007 Decision, enjoin the Army to direct FedSources to return or destroy any and all information received from the Army via the August 6, 2007 Release, enjoin FedSources to comply with the Army's direction, and permanently enjoin both the Army and FedSources from releasing any information requested by the FOIA Request to any party.

COUNT TWO

Violation of Administrative Procedure Act (Defendant's Action Violates the Trade Secrets Act)

39. Plaintiff Raytheon incorporates by reference the allegations in Paragraphs 1- 38 of its Complaint, as if fully set forth herein.

40. The July 30, 2007 Decision, the August 9, 2007 Decision, and the August 6, 2007 Release of Defendant Army constitute a final agency action within the meaning of 5 U.S.C. § 704, and is therefore a reviewable action as defined by the Administrative Procedure Act. In its attempt to protect the information sought by the FOIA Requests,

Plaintiff Raytheon has exhausted all the available administrative remedies provided by the Army.

41. The information requested by the FOIA Requests contains Plaintiff's trade secrets within the meaning of the Trade Secrets Act, 18 U.S.C. § 1905.

42. Plaintiff Raytheon will suffer irreparable harm if the Army releases the Plaintiff's trade secrets requested by the Jordan FOIA request, or by other subsequent requests.

43. Plaintiff Raytheon will suffer irreparable harm if the Plaintiff's trade secrets that the Army has released to FedSources are further disseminated either to FedSources' client or any other entity.

44. The TSA provides, among other things, that any government officer or employee who publishes, discloses, or makes known in any manner, or to any extent not authorized by law any information received in the course of employment that relates to trade secrets, confidential statistical data, or amounts of any income, profits, or losses, shall be fined or imprisoned, and shall be removed from office or employment. 18 U.S.C. § 1905. Furthermore, when pricing information falls within Exemption 4 of the FOIA, the government is precluded from releasing it under the Trade Secrets Act.

45. The July 30, 2007 Decision stated that Defendant Army would release requested trade secret information on or around August 6, 2007. Upon information and belief, the August 6, 2007 Release was conducted in accordance with the Decision. This release of trade secret information violated the TSA. Retention of the information by

FedSources, or further dissemination of the information by FedSources would compound this violation.

46. The July 30, 2007 Decision, the August 9, 2007 Decision, and the August 6, 2007 Release constitute an act which is unlawful because it is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right within the meaning of 5 U.S.C. § 706(2)(C). It is also unlawful because it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law within the meaning of 5 U.S.C. § 706(2)(A).

47. Accordingly, this Court should set aside the July 30, 2007 Decision and the August 9, 2007 Decision, enjoin the Army to direct FedSources to return or destroy any and all information received from the Army via the August 6, 2007 Release, enjoin FedSources to comply with the Army's direction, and permanently enjoin both the Army and FedSources from releasing any information requested by the FOIA Request to any party.

REQUESTED RELIEF

WHEREFORE, Plaintiff Raytheon respectfully request the following relief:

A. That this Court enter judgment holding unlawful and setting aside the July 30, 2007 Decision, the August 9, 2007 Decision, and August 6, 2007 Release as being in excess of the Army's statutory authority; without observance of procedures required by law; otherwise contrary to law; and arbitrary, capricious, and an abuse of discretion;

B. That this Court enjoin the Army to direct FedSources to return or destroy any and all information received from the Army via the August 6, 2007 Release, enjoin

FedSources to comply with the Army's direction, and permanently enjoin both the Army and FedSources from releasing any information requested by the FOIA Request to any party.

C. That this Court award Plaintiff Raytheon its costs and reasonable attorney's fees to be paid by the Army; and

D. That this Court grant Plaintiff Raytheon such other and further relief, legal or equitable, as justice may require.

Respectfully submitted,

ARNOLD & PORTER, LLP

By: 

Kristen Utig, Bar No. 452340

Stuart Turner Bar No. 478392

555 Twelfth Street

Washington, D.C. 20004

(202) 942-5000 Telephone

(202) 942-5999 Facsimile

*Attorney for Raytheon Company - Network
Centric Systems*

Dated: August 14, 2007

EXHIBIT A

"McMillan,
Beverly J Ms
RDECOM"
<Beverly.McMillan
@us.army.mil>
07/16/2007 08:22
AM

To
"lbaty@raytheon.com"
<lbaty@raytheon.com>
cc
"McMillan, Beverly J Ms RDECOM"
<Beverly.McMillan@us.army.mil>
Subject
W91CRB-07-D-0029 (Raytheon Company)
(UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Ms. Baty, the RDECOM Acquisition Center has received a Freedom of Information Act request from Fed Sources seeking a copy of subject contract with statement of work. My intent is to release a copy of the contract with attachment 1 (SOW). A copy of your proposal will not be released. If you have any questions regarding the release of these documents, please contact me by 24 Jul 07.

Thank you,

Beverly McMillan
Management Analyst
USARDECOM Acquisition Center
ATTN: AMSRD-ACC-CC
4118 Susquehanna Ave
APG, MD 21005-3013
V: 410-278-0850 (DSN 298)
F: 410-306-3740 (DSN 458)
Email: beverly.mcmillan@us.army.mil

Army Contracting: One Community Serving Our Soldiers, Serving Our Nation
Classification: UNCLASSIFIED
Caveats: NONE

EXHIBIT B

Raytheon



Network Centric Systems
Mailing Address:
P.O. Box 86018, M.S. 31
Dulles, VA 22026
1-800-368-5854

23 July 2007

In reply refer to:
431-214-2911

USARDECOM Acquisition Center
ATTN: AMSRD-ACC-CC
4118 Susquehanna Ave
APG, MD 21005-3013

ATTENTION: Beverly McMillan
Management Analyst

SUBJECT: Response to Freedom of Information Act (FOIA) Pre-disclosure Notice,
Contract W91CRB-07-D-0029 (TWSIIB IDIQ)

REFERENCE: (a) U.S. Army email received 16 July 2007

ENCLOSURE: (1) Red-Lined Contract W91CRB-07-D-0029, and Attachment 1,
Statement for Work
(2) Redacted Contract W91CRB-07-D-0029, and Attachment 1,
Statement for Work

Dear Ms. McMillan:

In response to the reference (a) email, in which RDECOM expresses its intent to release the subject contract and the Attachment 1 SOW in response to a FOIA request, Raytheon provides our position in enclosures (1) and (2) through specific identification of the information to be redacted and not to be released pursuant to Freedom of Information Act (FOIA), Exemption Four, 5 U.S.C. 552(b)(4), and as protected by the Trade Secrets Act, 18 U.S.C. § 1905.

The contract at issue was awarded as an IDIQ contract wherein RDECOM may exercise options to purchase under annual task orders. Similar contracts were also issued to BAE and DRS. All competitors will have the opportunity to provide revised pricing for future individual delivery orders that is lower than that currently identified in their contract. Under these circumstances, Raytheon considers the redacted information identified per the enclosures to be competition sensitive information and source selection sensitive information, the disclosure of which is likely to cause substantial harm to Raytheon's competitive position for future delivery orders under the Thermal Weapon Sight II Bridge ("TWSIIB") program. The program, by its very structure, remains competitive with each future delivery order until all five years of IDIQ range options are either exercised or expire.

In this case, because awarded CLIN quantities have been released and are available in the public domain, Raytheon is particularly sensitive to release of CLIN pricing, range pricing, range quantities and any references to funding or obligated amount by CLIN/SLIN. While it is true that in most cases competition for contracts is based on more than just price, courts reviewing release of pricing data under FOIA have clearly ruled that no other factor is "as readily quantifiable or objective as price." This is particularly true in the case of the TWSIIB program. Under the current contract, there is no difference in technical approach between the offerors, as all offerors have been contracted to produce the same item, under the same specifications. Therefore, the

importance of price will be greatly magnified as a competitive discriminator between the offerors. Under these circumstances, where all three competitors have demonstrated capability and capacity, the US Government customer must view price with greater weight (if not determinative weight) for the award of a future IDIQ task order, and must recognize the greater competitive harm that may arise from release of such information under FOIA.

Exemption 4 to the FOIA allows the Agency to withhold information where actual competition exists and where substantial competitive harm is likely. *National Parks & Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) announced a two-prong test for determining the confidentiality of business data under Exemption 4. The test permits withholding when disclosure would (1) impair the government's ability to obtain such necessary information in the future or (2) cause substantial harm to the competitive position of the submitter. The D.C. District Court has ruled that "line item pricing information . . . is exactly the type of information that constitutes 'confidential commercial or financial information' for purposes of FOIA." *MCI Worldcom v. Gen. Servs. Admin.*, 163 F.Supp.2d 28, 35 (D.D.C. 2001), citing *McDonnell Douglas Corp. v. NASA*, 180 F.3d 303, 306 (D.C. Cir. 1999).

The facts set forth above establish that actual competition exists in this case. *Gulf & Western Industries v. United States*, 615 F.2d 527, 530 (D.C. Cir. 1979), held that a "likelihood of substantial competitive injury" also needs be shown to satisfy this test and further confirmed that withholding was proper when the information if released would allow a contractor's competitors to accurately calculate future bids. With little effort, combining the CLIN quantity and pricing information with other publicly available information, a competitor would be able to calculate with reasonable accuracy Raytheon's future competitive bids for future TWSIIB delivery orders.

In *Sperry Univac Division v. Baldridge*, U.S. Dist. LEXIS 17764 (E.D. Va 1982), the District Court found the pricing information at issue was specific in nature and if released, competitors would be given insight into Sperry's pricing strategy. At issue in that case was current year pricing and discount information, which is very similar to the range pricing at issue in this case. Raytheon's contract includes order quantity ranges that trigger volume discounts for larger orders. Release of such information could give a competitor insight into Raytheon's discounting and pricing strategies, and allow a competitor to accurately estimate Raytheon's costs in order to undercut Raytheon's prices for future orders.

The risk of undercutting prices on future orders is at the center of the D.C. Circuit's most recent statement on the reach of Exemption 4. In *McDonnell Douglas Corp v. United States Department of the Air Force*, 375 F.3d 1182, 1193 (D.C. Cir. 2004), *reh'g en banc denied*, No. 02-5342 (D.C. Cir. 2004), the D.C. Circuit blocked release of unit prices where it was apparent from the record that "disclosure of plaintiffs' option year prices would likely cause [plaintiffs] substantial competitive harm by informing the bids of its rivals." *Id.*, 442 F. Supp. 2d. at 35-36 quoting *McDonnell Douglas*, 375 F.3d at 1190 (2004). The D.C. District Court recently applied *McDonnell Douglas* (2004) in ruling that option year unit prices should not be released when competitors could use the prices to construct and submit lower priced proposals in an attempt to "underbid" the awardee and convince the agency to recompete option year work. *Canadian Commercial Corp v. Department of the Air Force*, 442 F.Supp.2d 15, 35-36, (D.D.C. 2006). The district court also rejected the argument that the FAR makes release of unit pricing mandatory, notwithstanding Exemption 4. *Id.* at 40-41.

In the case of the TWSIIB IDIQ contract, the competitive harm is even more immediate and compelling; the competition for the procured work has not ended, but will continue, delivery order by delivery order, on a basis almost exclusively defined by price. The risk of underbidding is even stronger here than under the facts of *McDonnell Douglas* (2004) or *Canadian Commercial Corp.*

On October 12, 2001, Attorney General John Ashcroft, published a FOIA policy memo encouraging the protection of, *inter alia*, sensitive business information where a sound legal basis exists to do so. The most current cases clearly reject a *per se* rule either for or against the release of CLIN pricing, but require a case-by-case evaluation of the facts. In those cases, such as this one, where the facts show that release of the pricing information will directly impact future competition for the same requirements, these courts have ruled in favor of withholding. In this case, Raytheon has substantiated both the existence of actual competition and the likelihood of substantial competitive harm.

In addition to a showing of the likelihood of substantial competitive harm, FOIA requires analysis based on the need of the public to know in order to evaluate government responsibility and to provide ongoing oversight. However, where the total contract quantities and total pricing have already been released (as they have here), the public has little need for further detailed information on competitor pricing. *McDonnell Douglas*, 375 F.3d at 1193 (2004) Such detailed information "has little to do with the core purpose of the FOIA, namely, contributing significantly to public understanding of the operations or activities of the government. On the contrary, the information now in suit reveals the internal workings of the contractor, not those of the Government, and would seem to shed little if any light upon the agency's performance of its statutory duties." *Id.* In its essence, FOIA is a disclosure statute, but FOIA recognizes that while citizens must be able to determine what their government is up to, they must also be able to confide in their government. The FOIA, in particular Exemption 4, represents a carefully balanced compromise between the interests of the public in disclosure and the legitimate privacy interests of those who do business with the government. The information at issue in this case sheds no useful light upon the practices of government, but instead aims a spotlight directly onto the competitive strategies of Raytheon. It should therefore be withheld under Exemption 4 to the FOIA.

As your email did not specifically request other attachments or the initial delivery order, our response is limited to the contract and attachment (1) SOW. Should the government's communicated intent to release the contract, although not stated in the email, extend also to delivery order 01, we request the government provide notice to the undersigned immediately so that we be given time to review and address Delivery Order 01, specifically.

Provided as enclosure (1) is a red-lined copy of the contract document, provided for Government use only, and highlights the competition sensitive data Raytheon is requesting be exempt from disclosure pursuant to Exemption Four of FOIA, 5 U.S.C. 552(b)(4). Provided as enclosure (2) is the redacted copy of the contract, wherein information exempt from disclosure has been removed. In the event that your office intends to release the referenced documents, we request that we receive formal notification prior to such release.

Should you have any questions, please contact the undersigned at (972) 344-3694, or via e-mail at charrington@raytheon.com.

Sincerely,



Carol Harrington
Senior Manager, Contracts

EXHIBIT C

**(Attached to concurrently filed Motion to
Seal)**

EXHIBIT D

From: McMillan, Beverly J Ms RDECOM
Sent: Tuesday, July 17, 2007 7:28 AM
To: 'lbaty@raytheon.com'
Cc: McMillan, Beverly J Ms RDECOM
Subject: W91CRB-07-D-0029 (Raytheon Company) (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Ms. Baty, the RDECOM Acquisition Center has received a Freedom of Information Act request from the Law Offices of Gregory D. Jordan seeking a copy of subject contract, modifications and all attachments. My intent is to release a copy of the contract, modifications and all attachments. A copy of your proposal will not be released. If you have any questions regarding the release of these documents, please contact me by 2 Aug 07. You need only to address attachments 2 thru 11 since the contract and attachment 1 is being handled under the FOIA request from Fed Sources.

Thanks again,

Beverly McMillan
Management Analyst
USARDECOM Acquisition Center
ATTN: AMSRD-ACC-CC
4118 Susquehanna Ave
APG, MD 21005-3013
V: 410-278-0850 (DSN 298)
F: 410-306-3740 (DSN 458)
Email: beverly.mcmillan@us.army.mil

Army Contracting: One Community Serving Our Soldiers, Serving Our Nation
Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

EXHIBIT E

Raytheon

2 August 2007

Network Centric Systems
Mailing Address:
P O. Box 660246, M/S 31
Dallas, Texas
75266 USA

In reply refer to:
431-433-2912

USARDECOM Acquisition Center
ATTN: AMSRD-ACC-CC
4118 Susquehanna Ave
APG, MD 21005-3013

ATTENTION: Beverly McMillan
Management Analyst

SUBJECT: Response to Freedom of Information Act (FOIA) Pre-disclosure Notice,
Contract W91CRB-07-D-0029 (TWSIIB IDIQ)

REFERENCE: (a) U.S. Army email received 17 July 2007

ENCLOSURE: (1) Identification of Documents with Redactions
(2) Red-Lined Contract W91CRB-07-D-0029, and Attachments 1, 3,
5, 11 and Delivery Order 0001
(3) Redacted Contract W91CRB-07-D-0029, and Attachments 1, 3,
5, 11 and Delivery Order 0001

Dear Ms. McMillan:

In response to the reference (a) email, in which RDECOM expresses its intent to release the subject contract and all contract modifications and attachments in response to a FOIA request, Raytheon provides our position herein and in enclosures (1), (2) and (3) through specific identification of the information to be redacted and not to be released pursuant to Freedom of Information Act (FOIA), Exemption Four, 5 U.S.C. 552(b)(4), and as protected by the Trade Secrets Act, 18 U.S.C. § 1905.

The contract at issue was awarded as an IDIQ contract wherein RDECOM may exercise options to purchase under annual task orders. Similar contracts were also issued to BAE and DRS. All competitors will have the opportunity to provide revised pricing for future individual delivery orders that is lower than that currently identified in their contract. Under these circumstances, Raytheon considers the redacted information identified per the enclosures to be competition sensitive information and source selection sensitive information, the disclosure of which is likely to cause substantial harm to Raytheon's competitive position for future delivery orders under the Thermal Weapon Sight II Bridge ("TWSII") program. The program, by its very structure, remains competitive with each future delivery order until all five years of IDIQ range options are either exercised or expire.

In this case, because awarded CLIN quantities have been released and are available in the public domain, Raytheon is particularly sensitive to release of CLIN pricing, range pricing, range quantities and any references to funding or obligated amount by CLIN/SLIN. While it is true that in most cases competition for contracts is based on more than just price, courts reviewing release of pricing data under FOIA have clearly ruled that no other factor is "as readily quantifiable or

RDECOM
Page 2

In reply refer to Raytheon
letter 431-214-2912

objective as price." This is particularly true in the case of the TWSII program. Under the current contract, there is no difference in technical approach between the offerors, as all offerors have been contracted to produce the same item, under the same specifications. Therefore, the importance of price will be greatly magnified as a competitive discriminator between the offerors. Under these circumstances, where all three competitors have demonstrated capability and capacity, the US Government customer must view price with greater weight (if not determinative weight) for the award of a future IDIQ task order, and must recognize the greater competitive harm that may arise from release of such information under FOIA.

Exemption 4 to the FOIA allows the Agency to withhold information where actual competition exists and where substantial competitive harm is likely. *National Parks & Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) announced a two-prong test for determining the confidentiality of business data under Exemption 4. The test permits withholding when disclosure would (1) impair the government's ability to obtain such necessary information in the future or (2) cause substantial harm to the competitive position of the submitter. The D.C. District Court has ruled that "line item pricing information . . . is exactly the type of information that constitutes 'confidential commercial or financial information' for purposes of FOIA." *MCI Worldcom v. Gen. Servs. Admin.*, 163 F.Supp.2d 28, 35 (D.D.C. 2001), citing *McDonnell Douglas Corp. v. NASA*, 180 F.3d 303, 306 (D.C. Cir. 1999).

The facts set forth above establish that actual competition exists in this case. *Gulf & Western Industries v. United States*, 615 F.2d 527, 530 (D.C. Cir. 1979), held that a "likelihood of substantial competitive injury" also needs be shown to satisfy this test and further confirmed that withholding was proper when the information if released would allow a contractor's competitors to accurately calculate future bids. With little effort, combining the CLIN quantity and pricing information with other publicly available information, a competitor would be able to calculate with reasonable accuracy Raytheon's future competitive bids for future TWSIIB delivery orders.

In *Sperry Univac Division v. Baldrige*, U.S. Dist. LEXIS 17764 (E.D. Va 1982), the District Court found the pricing information at issue was specific in nature and if released, competitors would be given insight into Sperry's pricing strategy. At issue in that case was current year pricing and discount information, which is very similar to the range pricing at issue in this case. Raytheon's contract includes order quantity ranges that trigger volume discounts for larger orders. Release of such information could give a competitor insight into Raytheon's discounting and pricing strategies, and allow a competitor to accurately estimate Raytheon's costs in order to undercut Raytheon's prices for future orders.

The risk of undercutting prices on future orders is at the center of the D.C. Circuit's most recent statement on the reach of Exemption 4. In *McDonnell Douglas Corp v. United States Department of the Air Force*, 375 F.3d 1182, 1193 (D.C. Cir. 2004), *reh'g en banc denied*, No. 02-5342 (D.C. Cir. 2004), the D.C. Circuit blocked release of unit prices where it was apparent from the record that "disclosure of plaintiffs' option year prices would likely cause [plaintiffs] substantial competitive harm by informing the bids of its rivals." *Id.*, 442 F. Supp. 2d. at 35-36 quoting *McDonnell Douglas*, 375 F.3d at 1190 (2004). The D.C. District Court recently applied *McDonnell Douglas* (2004) in ruling that option year unit prices should not be released when competitors could use the prices to construct and submit lower priced proposals in an attempt to "underbid" the awardee and convince the agency to re-compete option year work. *Canadian Commercial Corp v. Department of the Air Force*, 442 F.Supp.2d 15, 35-36, (D.D.C. 2006). The district court also rejected the argument that the FAR makes release of unit pricing mandatory, notwithstanding Exemption 4. *Id.* at 40-41.

In the case of the TWSIIB IDIQ contract, the competitive harm is even more immediate and compelling; the competition for the procured work has not ended, but will continue, delivery order

RDECOM
Page 3

In reply refer to Raytheon
letter 431-214-2912

by delivery order, on a basis almost exclusively defined by price. The risk of underbidding is even stronger here than under the facts of *McDonnell Douglas (2004)* or *Canadian Commercial Corp.*


On October 12, 2001, Attorney General John Ashcroft, published a FOIA policy memo encouraging the protection of, *inter alia*, sensitive business information where a sound legal basis exists to do so. The most current cases clearly reject a *per se* rule either for or against the release of CLIN pricing, but require a case-by-case evaluation of the facts. In those cases, such as this one, where the facts show that release of the pricing information will directly impact future competition for the same requirements, these courts have ruled in favor of withholding. In this case, Raytheon has substantiated both the existence of actual competition and the likelihood of substantial competitive harm.

In addition to a showing of the likelihood of substantial competitive harm, FOIA requires analysis based on the need of the public to know in order to evaluate government responsibility and to provide ongoing oversight. However, where the total contract quantities and total pricing have already been released (as they have here), the public has little need for further detailed information on competitor pricing. *McDonnell Douglas*, 375 F.3d at 1193 (2004) Such detailed information "has little to do with the core purpose of the FOIA, namely, contributing significantly to public understanding of the operations or activities of the government. On the contrary, the information now in suit reveals the internal workings of the contractor, not those of the Government, and would seem to shed little if any light upon the agency's performance of its statutory duties." *Id.* In its essence, FOIA is a disclosure statute, but FOIA recognizes that while citizens must be able to determine what their government is up to, they must also be able to confide in their government. The FOIA, in particular Exemption 4, represents a carefully balanced compromise between the interests of the public in disclosure and the legitimate privacy interests of those who do business with the government. The information at issue in this case sheds no useful light upon the practices of government, but instead aims a spotlight directly onto the competitive strategies of Raytheon. It should therefore be withheld under Exemption 4 to the FOIA.

Provided as enclosure (1) is a summary of the documents in which Raytheon has identified redactions. Enclosure (2) is a red-lined copy of the documents containing redactions provided for Government use only, and highlights the competition sensitive data Raytheon is requesting be exempt from disclosure pursuant to Exemption Four of FOIA, 5 U.S.C. 552(b)(4). Provided as enclosure (3) is the redacted copy of the contract, wherein information exempt from disclosure has been removed. **In the event that your office intends to release the referenced documents without the full complement of redactions, we request that we receive formal notification prior to such release.**

Should you have any questions, please contact the undersigned at (972) 344-3694, or via e-mail at charrington@raytheon.com.

Sincerely,


Carol Harrington
Senior Manager, Contracts

Enclosure (1) to Raytheon
Letter 431-214-2912**Identification of Documents with Redactions**

Document Number	Title	No. of Pages	Redactions	Notes
W91CRB-07-D-0029	Basic Contract	88	Yes	1
Delivery Order 0001	Delivery Order 0001	14	Yes	1
Attachment 001	Statement of Work	19	Yes	2
Attachment 002	Document Summary List	03	No	
Attachment 003	Performance Specification for Thermal Weapons Sight	72	Yes	2
Attachment 004	Performance Specification for Thermal Imaging Module	03	No	
Attachment 005	Quality Validation Plan	116	Redacted in its entirety	2 & 3
Attachment 006	Consideration Equation	02	No	
Attachment 007	DD Form 254	03	No	
Attachment 008	TOP 3-2-609 Test Operation Procedure – Chemical Compatibility of Nonmetallic Materials Used in Small Arms Systems	44	No	
Attachment 009	Modular Ballistic Solution – Interface Control Drawing	32	No	
Attachment 010	Bracket Drawings	63	No	
Attachment 011	Spares Pricing Spreadsheet	02	Yes	1 & 4

Notes:

- Redactions supported in accordance with Raytheon letter 431-214-2912 dated 2 August 2007 and enclosed herein.
- Redactions supported in accordance with Raytheon letter 431-214-2912 dated 2 August 2007 and enclosed herein and supported by the fact that the source of the redacted data is Raytheon's competitive proposal in which competitors were required to specifically propose unique technical parameters for evaluation and which the is held to be highly competition sensitive and source selection sensitive for which the release is likely to cause substantial harm to Raytheon's competitive position in future delivery orders.
- Redactions supported in accordance with Raytheon letter 431-214-2912 dated 2 August 2007 and enclosed herein. With specific regard to Attachment 005, Quality Validation Plan, Raytheon redacts this attachment in its entirety, ***as it is, in its entirety, an extraction from Raytheon's competitive proposal*** and identifies Raytheon's unique approaches and processes to be utilized in performance of the contract and which were specifically evaluated by the government for this competitive award and as therefore exempt from release as source selection sensitive data.
- Redactions supported in accordance with Raytheon letter 431-214-2912 dated 2 August 2007 and enclosed herein Attachment 11, Spares Pricing Spreadsheet is redacted in it's entirety as every offeror in the TWSIIB competitive procurement was required to create a unique listing of spares, spares quantities and prices to support the offeror's unique spares strategy and ***it is, in its entirety, an extraction from Raytheon's competitive proposal***. Raytheon considers this listing in its entirety to be competition sensitive and source selection sensitive data, the release of which is likely to cause substantial harm to Raytheon's competitive position in future delivery orders.

Enclosure (2) to Raytheon
Letter 431-214-2912

**Red-Lined Contract W91CRB-07-D-0029, and
Attachments 1, 3, 5, 11 and Delivery Order 0001**

Enclosure (3) to Raytheon
Letter 431-214-2912

**Redacted Contract W91CRB-07-D-0029, and
Attachments 1, 3, 5, 11 and Delivery Order 0001**

EXHIBIT F

**(Attached to concurrently filed Motion to
Seal)**

EXHIBIT G

08/09/2007 14:41 410-278-0916

ACQUISITION CENTER

PAGE 01/02

Director
USARDECOM Acquisition Center
ATTN: AMSRD-ACC-CC
4118 Susquehanna Avenue
APG, MD 21003-3013
V: 410-278-0850 (DSN 298)
F: 410-308-3740
Email: beverly.mcmillan@us.army.mil

**USARDECOM
ACQUISITION
CENTER**

Fax

To:	Carol Harrington/Raytheon	From:	Beverly McMillan
Fax:	972-344-3760	Pages:	
Phone:	972-344-3694	Date:	09 Aug 07
Re:	FOIA (W91CRB-07-D-0029)	CC:	

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments: See attached letter dated 9 Aug 07.

08/09/2007 14:41 410-278-0916

ACQUISITION CENTER

PAGE 02/02



DEPARTMENT OF THE ARMY
US ARMY RESEARCH, DEVELOPMENT AND ENGINEERING COMMAND ACQUISITION CENTER
4118 SUSQUEHANNA AVENUE
ABERDEEN PROVING GROUND MD 21003-3013

REPLY TO
ATTENTION OF

August 9, 2007

Combat Operations Branch

Ms. Carol Harrington
Senior Manager, Contracts
Raytheon
P.O. Box 660246, M/S 31
Dallas, Texas 75266

Dear Ms. Harrington:

This is in response to your letter dated August 2, 2007 (431-433-2912) regarding objection to the release of information under contract W91CRB-07-D-0029 in response to Freedom of Information Act request from the Law Offices of Gregory D. Jordan.

I have considered your objection and I am directing the release of the contract with attachments. Attachment 3 has been redacted as requested, attachments 5 and 11 have been deleted. This release will be effected on August 20, 2007.

The point of contact for this action is Beverly McMillan, (410) 278-0850, email: beverly.mcmillan@us.army.mil.

Sincerely,



for Kathryn J. Bankerd
Contracting Officer

EXHIBIT H

08/09/2007 14:37 418-278-0916

ACQUISITION CENTER

PAGE 01/04

Director
 USARDECOM Acquisition Center
 ATTN: AMSRD-ACC-CC
 4118 Susquehanna Avenue
 APG, MD 21005-3013
 V: 410-278-0850 (DSN 298)
 F: 410-306-3740
 Email: beverly.mcmillan@us.army.mil

**USARDECOM
 ACQUISITION
 CENTER**

Fax

To: Carol Harrington/Raytheon	From: Beverly McMillan
Fax: 972-344-3760	Pages:
Phone: 972-344-3694	Date: 09 Aug 07
Re: FOIA (W91CRB-07-D-0029)	CC:
<input type="checkbox"/> Urgent <input type="checkbox"/> For Review <input type="checkbox"/> Please Comment <input type="checkbox"/> Please Reply <input type="checkbox"/> Please Recycle	

• Comments: The attached letter in response to your objection to release contract W91CRB-07-D-0029 was sent FEDEX 30 Jul 07 to the address on your letterhead. The FEDEX package was returned today, 09 Aug 07, as undelivered. This was given to a clerk to send out and I was unaware that FEDEX could not deliver to PO Box addresses. Unfortunately, the contract has been released.

08/09/2007 14:37 410-278-0916

ACQUISITION CENTER

PAGE 02/04



DEPARTMENT OF THE ARMY
US ARMY RESEARCH, DEVELOPMENT AND ENGINEERING COMMAND ACQUISITION CENTER
4118 SUSQUEHANNA AVENUE
ABERDEEN PROVING GROUND MD 21005-3013

REPLY TO
ATTENTION OF

July 30, 2007

Combat Operations Branch

Ms. Carol Harrington
Senior Manager, Contracts
Raytheon
P.O. Box 660246, M/S 31
Dallas, Texas 75266

Dear Ms. Harrington:

This is in response to your letter dated July 23, 2007 (431-214-2911) regarding objection to the release of information under contract W91CRB-07-D-0029 in response to Freedom of Information Act request from Fed Sources.

I have considered your objection; however, you fail to support a conclusion that competitive harm will result from the release of unit pricing, total amount, range pricing, range quantities, and warranty information in statement of work (3.2.10). This information reflects the price the Government pays and is not exempt from release. I am directing the release of the basic contract and attachment 1 (Statement of Work). This release will be effected on August 6, 2007.

The point of contact for this action is Beverly McMillan, (410) 278-0850, email: beverly.mcmillan@us.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Bankerd".

Kathryn J. Bankerd
Contracting Officer

08/09/2007 14:37 410-278-0916

ACQUISITION CENTER

PAGE 03/04

FedEx. US Airbill

Express

1 From This portion can be removed for Recipient's records.

Rate 7-30-07

FedEx Tracking Number

6109934200983

Sender: MS. BEVERLY MCILLAN 410 278-0880

Company: US RDECOM ACQUISITION CENTER

Address: 411B SUSQUEHANNA AVE RM 131

City: ABER PROV GARD State: MD Zip: 21005-3013

2 Your Internal Billing References

3 To: Recipient: MS. CAROL HARRINGTON 972 344-3694
Senior Manager, Contracts

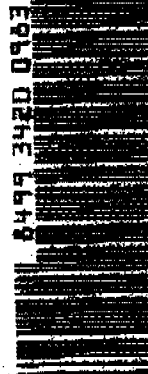
Company: RAYTHEON

Recipient Address: P.O. BOX 660246

City: M/S 31

Address: DALLAS

City: TX Zip: 75266



6109934200983

*The World On Time***FedEx**

TRK# 6109934200983

TUE - 31 JUL A1
STANDARD OVERNIGHTDFW
TX-15
75266**XH-RBDA**

Recipient Copy

4a Express Freight Service
☐ FedEx Priority Overnight ☒ FedEx Standard Overnight ☐ FedEx First Overnight
☐ FedEx 2 Day ☐ FedEx Express Saver
☐ FedEx Overnight ☐ FedEx Freight
☐ FedEx 1 Day Freight ☐ FedEx 2 Day Freight

4b Express Freight Service
☐ FedEx 1 Day Freight ☐ FedEx 2 Day Freight

5 Packaging
☒ FedEx Envelope ☐ FedEx Box ☐ FedEx Tube ☐ Other

6 Special Handling
☐ Fragile ☐ Hazardous ☐ High Value
☐ Other

7 Payment
☒ Prepaid ☐ Collect ☐ Bill Me ☐ Bill Party ☐ Credit Card ☐ Cash On Delivery

8 Signature
☒ No Signature ☐ Adult Signature ☐ Restricted Signature

9 Insurance
☒ No Insurance ☐ Insured ☐ Other

10 Tracking
☒ Tracking ☐ No Tracking

11 Signature
☒ Signature ☐ No Signature

12 Signature
☒ Signature ☐ No Signature

13 Signature
☒ Signature ☐ No Signature

14 Signature
☒ Signature ☐ No Signature

15 Signature
☒ Signature ☐ No Signature

16 Signature
☒ Signature ☐ No Signature

17 Signature
☒ Signature ☐ No Signature

18 Signature
☒ Signature ☐ No Signature

19 Signature
☒ Signature ☐ No Signature

20 Signature
☒ Signature ☐ No Signature

One Label is required for each package. See the FedEx Service Guide for details.
 Sign to Authorize Delivery Without a Signature

466

Align top of FedEx

1. **THE**
 2. **THE**
 3. **THE**
 4. **THE**
 5. **THE**
 6. **THE**
 7. **THE**
 8. **THE**
 9. **THE**
 10. **THE**
 11. **THE**
 12. **THE**
 13. **THE**
 14. **THE**
 15. **THE**
 16. **THE**
 17. **THE**
 18. **THE**
 19. **THE**
 20. **THE**
 21. **THE**
 22. **THE**
 23. **THE**
 24. **THE**
 25. **THE**
 26. **THE**
 27. **THE**
 28. **THE**
 29. **THE**
 30. **THE**
 31. **THE**
 32. **THE**
 33. **THE**
 34. **THE**
 35. **THE**
 36. **THE**
 37. **THE**
 38. **THE**
 39. **THE**
 40. **THE**
 41. **THE**
 42. **THE**
 43. **THE**
 44. **THE**
 45. **THE**
 46. **THE**
 47. **THE**
 48. **THE**
 49. **THE**
 50. **THE**
 51. **THE**
 52. **THE**
 53. **THE**
 54. **THE**
 55. **THE**
 56. **THE**
 57. **THE**
 58. **THE**
 59. **THE**
 60. **THE**
 61. **THE**
 62. **THE**
 63. **THE**
 64. **THE**
 65. **THE**
 66. **THE**
 67. **THE**
 68. **THE**
 69. **THE**
 70. **THE**
 71. **THE**
 72. **THE**
 73. **THE**
 74. **THE**
 75. **THE**
 76. **THE**
 77. **THE**
 78. **THE**
 79. **THE**
 80. **THE**
 81. **THE**
 82. **THE**
 83. **THE**
 84. **THE**
 85. **THE**
 86. **THE**
 87. **THE**
 88. **THE**
 89. **THE**
 90. **THE**
 91. **THE**
 92. **THE**
 93. **THE**
 94. **THE**
 95. **THE**
 96. **THE**
 97. **THE**
 98. **THE**
 99. **THE**
 100. **THE**

Express

ORIGIN ID: R804
ANDY MATCHUS

411 W. COMMERCE
DALLAS TX 75212
UNITED STATES US

SHIP DATE: 8/24/87
AIRLOT: 6-5 LB. RM
SYSTEM: 481002/CMT231
ACCOUNT: 5 *****

TO MS. BENNETT

US DECOM ACQUISITION CENTER
4118 SUSQUEHARRA AVE RM 131
OVERSEEN PROVING GRO, MD 21065
FBI BOSTON/200007

EXP 37



Delivery Address
Garrett
#55441700

BILL RECIPIENT

人知

7035 2351 1843 Form 0201

21005

57-24

58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
8

CHI

Defuer By-
2000000

22

116

IMB

2

57.

~~SECRET~~

3

40-271

100

EXHIBIT I

"Casey, Tara L Ms RDECOMAC"<Tara.L.Casey@us.army.mil>
To: "Casey, Tara L Ms RDECOMAC"<Tara.L.Casey@us.army.mil>
Cc:
08/01/2007 12:24 PM
Subject: New order (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Good afternoon,

I just received a requirement for 29 additional MWTS. Please respond back (an email is fine) and let me know what your delivery schedule for these items would be. Revised pricing can also be submitted, but only if the prices are lower than what was awarded in the basic contract. I would like your response by 3:30 PM on Thursday if at all possible. However, if you need more time, please just ensure your response is received no later than 3:30 PM on Friday, August 3rd.

If you have questions, please feel free to contact me.

Tara Casey
U.S. Army Research, Development and Engineering Command Acquisition Center
Phone: 410-278-0863
Fax: 410-278-0904
E-mail: tara.l.casey@us.army.mil
Army Contracting: One Community Serving our Soldiers, Serving our Nation
Classification: UNCLASSIFIED
Caveats: NONE

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2007, a true and accurate copy of the foregoing Complaint, with accompanying exhibits, was served on the following individuals. Exhibits C and F referenced in the text were not attached, and have been attached to the concurrently filed Motion to Seal. The Army has never identified a contact in its legal department for this FOIA matter, but Raytheon requests that the Army personnel in receipt of these documents forward the material to the Army's counsel at once:

Beverly McMillan (Email and Overnight Mail)
Management Analyst
USARDECOM Acquisition Center
ATTN: AMSRD-ACC-CC
4118 Susquehanna Ave
Aberdeen Proving Ground, MD 21005-3013
Tel: (410) 278-0850 (DSN 298)
Email: beverly.mcmillan@us.army.mil

Kathryn J. Bankerd (Fax and Overnight Mail)
Contracting Officer
USARDECOM Acquisition Center
ATTN: AMSRD-ACC-CC
4118 Susquehanna Ave
Aberdeen Proving Ground, MD 21005-3013
Tel: (410) 278-0850 (DSN 298)
Fax: (410) 306-3740

Carolyn Alston (Email and Overnight Mail)
General Counsel
Washington Management Group
1990 M St NW # 400
Washington, DC 20036
Tel: (202) 833-1120
Email: calston@washmg.com



Stuart Turner